**GOVT 2305  
Natural Rights, Separated Powers and the Declaration of Independence**

Hopefully, after reading through the material presented in the previous section you are comfortable with the concepts of government and politics, and of the role that education is to play in maintaining a democratic republic.  
  
*And hopefully that last part takes the sting out of having to take this class.*

This should set us up for a discussion of the type of governing system we have in the United States and the factors that led to its establishment.

A major point – the one we will cover in this section – is that American government is based on the idea (introduced in the previous section) that people have unalienable rights and that governments are formed in order to secure them. This is a relatively modern idea by the way.

This idea evolved over time.  
  
*In this section, I attempt to   
describe that evolution.*

In this section we trace the institutional and philosophical development of the concept of [natural – or unalienable](http://en.wikipedia.org/wiki/Natural_and_legal_rights) -- rights.   
  
We conclude by looking at how they are articulated in the [Declaration](http://en.wikisource.org/wiki/United_States_Declaration_of_Independence) of [Independence](http://en.wikipedia.org/wiki/United_States_Declaration_of_Independence).

The goal is to fully understand the argument presented in the Declaration of Independence, and what the document did and did not do.

We will take an historical approach in order to understand the development of the concepts in the document.  
  
I hope to persuade you to consider the document as being a product of human ingenuity, based on history.

Doing so will also allow us to understand how, over the course of time, governmental power became separated into different institutions. This provides an effective, pragmatic way to limit power. We will explore this topic more fully in an upcoming section.

Some key points about the document before we begin.  
  
*(Note that the* [*Texas Declaration of Independence*](Texas%20Declaration%20of%20Independence) *is similar in spirit to the national document. We wont read through it in 2305, but you should read it yourself and note the similarities and differences between the two documents.)*

The Declaration was not a petition seeking redress from the British monarch, as were [previous documents](http://en.wikipedia.org/wiki/Olive_Branch_Petition) issued by the colonists, it was an argument addressed to a “candid world” stating that the colonists no longer consented to British rule.  
  
It backed up its argument with examples of British attempts to usurp colonial power.

It has three major parts, following a brief introduction:

The introduction simply states that when a “nation” declares itself to be independent from another, the respectful thing to do is to declare why it is necessary to do so. A rational argument is being presented to other rational people.   
  
*Then . . .*

It argues that rights are innate in the individual, not granted by a government and that governments are established to secure the rights of individuals. In addition, the just powers of government are based on the consent of the governed.  
  
*Sounds like Locke huh?*

Here is a crucial – philosophical - point about the consent of the governed: It is the only way that – in a system where everyone is argued to have equal, natural rights - one person can legitimately exercise authority over another.  
  
To see this argument made more fully read: [Popular Basis of Political Authority](http://press-pubs.uchicago.edu/founders/documents/v1ch2I.html)

Second, it argues that the King of England was attempting to establish a tyranny over the colonies by usurping colonial legislative, executive and judicial powers. This means that he was attempting to combine them.

It also provides examples (over 25) of specific usurpations – that is, things the king was doing to take control. These are the grievances, and they take up the bulk of the document.

Third, it concludes by establishing that the colonies were now independent states, but it is unclear about whether they are a single nation or a collection of sovereign entities.

FYI: You might be interested in this [loyalist’s rebuttal](http://nationalhumanitiescenter.org/pds/makingrev/rebellion/text8/hutchinsonrebuttal.pdf) (by [Thomas Hutchison](http://en.wikipedia.org/wiki/Thomas_Hutchinson_(governor))) of the declaration and the arguments it makes.   
  
Here is a link to an even more lengthy rebuttal: [An Answer to the Declaration of the American Congress](http://ia700401.us.archive.org/19/items/cihm_20519/cihm_20519.pdf).

Note: The Declaration of Independence is not a constitution. It does not establish a system of government. But the authors of the document would create a confederacy under the Articles of Confederation.  
  
We will cover that document in the next set of slides.

The key question then will be to determine what type of constitutional system would best secure the unalienable rights.  
  
Soon enough we will explore the various merits of the Articles of Confederation versus the Constitution. Which of these was best able to secure the unalienable rights?

Why is this process important?

Because once these ideas take hold and properly designed governing institutions are established, and power is contained, civilization can evolve.

Here’s a nice quote from [Winston Churchill](http://en.wikipedia.org/wiki/Winston_Churchill) about this.

What is civilized society? *“It means a society based on the opinions of civilians. It means that violence, the rule of warriors and despotic chiefs, the conditions of camps and warfare, of riot and tyranny, give place to parliaments where laws are made, and independent courts of justice in which over long periods those laws are maintained. That is civilization – and in its soil grow continually freedom, comfort and culture. When Civilization reigns in any country, a wider and less harassed life is afforded to the masses of the people.”*

And one more quote for good measure:   
  
*“Liberty is the delicate fruit of a mature civilization.” –* [*Lord Acton*](http://en.wikipedia.org/wiki/John_Dalberg-Acton,_1st_Baron_Acton)*.*

And an extended quote from Hamilton in [Federalist #9](http://www.constitution.org/fed/federa09.htm):

The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided.

One thing I hope you come to understand in these sections is that individual freedom, and civilization as we know it, is only attained when powers are properly structured in constitutions grounded on history.   
  
Consequently, liberty can only be maintained if this arrangement is preserved.

But here is a practical question: How do you do this?   
  
How do we know if we have a properly designed governing system that provides stability, but does not intrude excessively on individual liberty? How do we know we have it right?

The best I can offer right now is that we figure this out over the course of history. This give us something pragmatic to consider. What has worked in the past and what has not worked in the past? Its tough to figure it out ahead of time.

Now for some of that history.  
  
*This is a first brief pass over the topic.*

I’ll begin with a preliminary statement: ideas and institutions matter. America is unique because its founding document was based on ideas and institutions that have evolved over history.

The argument made in the Declaration of Independence is the culmination of several centuries of history.   
  
Two types:   
1 - Institutional History  
2 - Philosophical History

By “institutional history” I refer to the way that governing institutions have developed over Anglo -American history.   
  
*We have progressed from concentrated control by an executive (monarch) to balanced governmental power including legislative and judicial institutions.*

For more on the term “institution” click [here](http://plato.stanford.edu/entries/social-institutions/) and [here](http://en.wikipedia.org/wiki/Institution)  
  
“An **institution** is any [structure](http://en.wikipedia.org/wiki/Social_structure) or [mechanism](http://en.wikipedia.org/wiki/Social_mechanism) of [social order](http://en.wikipedia.org/wiki/Social_order) and [cooperation](http://en.wikipedia.org/wiki/Cooperation) governing the [behavior](http://en.wikipedia.org/wiki/Behavior) of a set of [individuals](http://en.wikipedia.org/wiki/Individual) within a given human community. Institutions are identified with a [social purpose](http://en.wikipedia.org/wiki/Social_purpose), transcending individual [human](http://en.wikipedia.org/wiki/Human) lives and intention by mediating the rules that govern cooperative human behavior.”

By “philosophical history” I refer to the development of theoretical justifications for the idea that individuals have natural rights and are not subject to placement within a class system.   
  
*Simply put, this involves a shift from governments based on the divine right of the monarch to the natural rights of the individual.*

Now for some specifics on institutional history.

Anglo-American institutional history has witnessed a shift from concentrated power under the authority of an executive to a system of checks and balances where a strong legislative and judicial branch can limit the executive.

From [absolute monarchy](http://en.wikipedia.org/wiki/Absolute_monarchy) to [constitutional monarchy](http://en.wikipedia.org/wiki/Constitutional_monarchy).

The process takes centuries, and begins with the signing of the [Magna Carta](http://en.wikipedia.org/wiki/Magna_Carta), by [King John](http://en.wikipedia.org/wiki/John_of_England), in 1215. What had been unrestrained monarchic power becomes defined executive power within a system which contains equally powerful legislative and judicial institutions.  
  
*Suddenly, at least in theory, executive power can then be checked. Here’s a drawing of King John signing the Magna Carta, which begins this slow process.*

But the Magna Carta was limited in its impact because there was no mechanism for actually, physically, imposing limits on the monarch.  
  
*This process would take centuries and not bear fruit until the 1600s.*

The actual power of the monarch would be limited by an increasingly powerful Parliament and an independent court system.  
  
*These would influence the eventual development of Congress and   
the Supreme Court.*

This was a major accomplishment that took centuries and several civil wars to complete.  
  
*Which assumes its completed of course.*

It also sets the stage for our system of separated powers. Which holds that there are three things that governments do (make, implement, and adjudicate law) and that these powers ought to be vested in three separate institutions.   
  
Again, more on this soon enough. The chore here is to understand how this developed over time.

This story takes us back to Great Britain and the period of history stretching roughly from the [Magna Carta](http://en.wikipedia.org/wiki/Magna_Carta) (1215) through the [English Bill of Rights](http://en.wikipedia.org/wiki/English_Bill_of_Rights) (1689).

Over this period we witness a shift from the arbitrary rule by an unrestrained monarch to a constitutional system where all governing institutions are kept in check by each other.

In the former, all governing powers are vested in the monarch – which is the definition of tyranny. In the latter, governing powers are separated into three institutions.

This point will be expanded below.

Now for a bit more detail on philosophical history.

By “philosophical history” I refer to the development of theoretical justifications for the idea that individuals have natural rights and are not subject to placement within a class system.

This, we will see, is a concept that was developed by a British philosopher named [John Locke](http://en.wikipedia.org/wiki/John_Locke) and replaced the doctrine of [divine right of the king](http://en.wikipedia.org/wiki/Divine_right_of_kings).

People like [Charles I](http://en.wikipedia.org/wiki/Charles_I_of_England) were big fans of the Divine Right of Kings

The doctrine of divine right was used to justify, on religious and philosophical grounds, the position of the monarch as sovereign ruler over the territory.

The doctrine of divine right would be eventually replaced with the theory that men – rationally – agreed to establish a governing system because individual rights are difficult to secure without group effort.

After 1689 and the signing of the English Bill of Rights, it was possible to argue - safely and publicly - that individuals possess natural rights. The argument became especially popular in the British colonies in North America.

The most important articulation of this theory is found in John Locke’s argument in the [Second Treatise on Government](http://en.wikipedia.org/wiki/Two_Treatises_of_Government).

Here is a key distinction between the two theories:   
  
Under divine right,   
the king was the law,  
  
Under natural right,   
the king was beneath it.

This shift required a radical rethinking of the justification for the establishment of government and what legitimizes its power.

Locke’s theory has simple basic components:

1 – People are endowed with natural rights  
  
2 – governments are established to secure them  
  
3 – governments must be based on the consent of the governed

The doctrine of natural rights influenced Jefferson’s articulation of unalienable rights in the Declaration of Independence.  
  
*He apparently did not like it when people pointed out that his theory sounded a lot like Locke’s.*

Hopefully this little overview gives you a sense of these transitions. Now we will dig into each more thoroughly.  
  
*This is a more detailed   
second pass over this history.*

More on Institutional History

These are the documents and events that are primarily important: [Charter of Liberties](http://en.wikipedia.org/wiki/Charter_of_Liberties) (1100)  
[Magna Carta](http://en.wikipedia.org/wiki/Magna_Carta) (1215)  
[Petition of Right](http://en.wikipedia.org/wiki/Petition_of_Right) (1628)  
[The Execution of Charles the First](http://en.wikipedia.org/wiki/Charles_I_of_England) (1641)  
[Glorious Revolution](http://en.wikipedia.org/wiki/Glorious_Revolution) (1688)  
[English Bill of Rights](http://en.wikipedia.org/wiki/English_Bill_of_Rights) (1689)

Note: Together, the Magna Carta, the Petition of Right, and the English Bill of Rights make up the British Constitution.  *It does not have one written document – as The United States does – which forms its basic laws, though they often like to point out theirs make ours possible. They have a point.*

Also note that key components of these documents would end up being in the US Constitution as well.

Prior to the Charter of Liberties power tended to be concentrated in the hands of a monarch who ruled by [fiat](http://www.merriam-webster.com/dictionary/fiat). The monarch had absolute rule.  
  
Britain was under a [feudal system](http://en.wikipedia.org/wiki/Feudalism). Society was [hierarchical](http://en.wikipedia.org/wiki/Hierarchy). Everyone knew their place.

Absolute rulers could tax as they choose and force people to fight whatever wars they chose to become involved in.

This led to ongoing conflict, especially between the monarchy and the nobility, and the monarchy and the church.  
  
 As we know, absolute rule is costly and some, wiser rulers chose to compromise rather than fight.

The Charter of Liberties was a compromise issued by [Henry I](http://en.wikipedia.org/wiki/Henry_I_of_England) in 1100 as a way to calm the fears of the nobility.   
  
[Charter of Liberties](http://en.wikipedia.org/wiki/Charter_of_Liberties) (1100)  
[Text](http://www.nhinet.org/ccs/docs/char-lib.htm)

He voluntarily agreed to limit his power over the nobility and the church. These would become known as “ancient rights and liberties.” In the future, whenever a ruler did not wish to recognize the rights of the nobility, they would claim that this ancient agreement was being violated.   
  
*For example:* [*Vindicating Their Ancient Rights and Liberties*](http://www.acton.org/pub/religion-liberty/volume-10-number-5/vindicating-their-ancient-rights-and-liberties)

But the charter would be quickly revoked. Henry simply changed his mind. Recall that the danger of autocratic power is its arbitrary nature.

One copy of the Charter remained however and it was in the possession of the [Archbishop of Canterbury](http://en.wikipedia.org/wiki/Archbishop_of_Canterbury) [Stephen Langdon](http://en.wikipedia.org/wiki/Stephen_Langton).

It would be shown by the Archbishop to a handful of barons upset by the capricious, arbitrary, and abusive power of [King John](http://en.wikipedia.org/wiki/John,_King_of_England), who ruled from 1199-1216.

You’ll see [John in the following clip](http://www.youtube.com/watch?v=whaJc9Ue3Bs&feature=related) from the Lion in Winter. He looks far less monarchic in the movie than in the drawing to the right. Who knows what he really looked like?

The barons had been subjected to arbitrary taxes and to compulsory military service, in addition to random acts of humiliation.  
  
This led the barons to group together, gather their strength and force the king to sign an agreement to recognize limits on his powers.

That document was the [Magna Carta](http://en.wikipedia.org/wiki/Magna_Carta) (1215).  
  
Click here for the [Text](http://avalon.law.yale.edu/medieval/magframe.asp)

For the ambitious: [*Magna Carta: A Commentary on the Great Charter of King John, with an Historical Introduction*](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=338&Itemid=27)

If you read through the text you’ll notice that much of the content is related to disputes that were unique to the times and do not affect us greatly here.   
  
A handful though established limits on executive power that became precedents for further limitations.

Here are a few random components:

12. No scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter; and for these there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the city of London.

A [scutage](http://en.wikipedia.org/wiki/Scutage) is a type of tax. This section states that they cannot be imposed without the consent of the kingdom. This is the origin of the idea that people must be able to consent – or oppose – taxes imposed on them.  
  
[Click here for detail](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=338&chapter=48804&layout=html&Itemid=27).

17. [Common pleas](http://en.wikipedia.org/wiki/Court_of_Common_Pleas_(England)) shall not follow our court, but shall be held in some fixed place.

The ability to use the courts to file lawsuits has to be made convenient to the people who wish to file them..

30. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

Along with many other clauses, the rights of freeman against the arbitrary use of executive power is established.

38. No bailiff for the future shall, upon his own unsupported complaint, put any one to his "law," without credible witnesses brought for this purpose.

39. No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.

Altogether, these sections establish the basis for what would become known as [habeas corpus](http://en.wikipedia.org/wiki/Habeas_corpus), which is Latin for “you must present the person in court.” Someone cannot be arrested and sent to prison without the opportunity to contest their imprisonment.

This established the foundation for a governing system based on the rule of law, not the rule of man.   
  
Arbitrary rule was being replaced with rule based on procedure.

But there is a hitch.  
  
But the immediate effect of the Magna Carta was limited.

First, it was seen, by the Church in Rome, as undermining the divine authority of the king. It could also be used to undermine the authority of the church.  
  
Britain at that time was under the protection of the church. Any limit on the British King could be imposed on the Pope.

*“Pope Innocent III annulled the "shameful and demeaning agreement, forced upon the King by violence and fear." He rejected any call for restraints on the King, saying it impaired John's dignity. He saw it as an affront to the Church's authority over the King and the 'papal territories' of England and Ireland, and he released John from his oath to obey it.”*

Never the less, the document had a major impact on governing authority.   
  
Perhaps the most consequential part of the Magna Carta was the Security Clause.

The Security Clause (61)  
  
 “ . . . we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter . . . “

This allowed for the development of what would become the [British Parliament](http://en.wikipedia.org/wiki/Parliament_of_the_United_Kingdom). A small collection of noblemen could meet and oversee the actions of the king, and had the authority to respond to abuses.   
  
*They would become the* [*enforcers of the Magna Carta*](http://www.oxforddnb.com/public/themes/93/93691.html)*.*

Today the legislature has a similar power: [oversight](http://en.wikipedia.org/wiki/Congressional_oversight).   
  
This provides an opportunity for the legislature to place limits on the actions of the executive. The courts also have a similar power: [judicial review](http://en.wikipedia.org/wiki/Judicial_review).

This is the key development.

Following Magna Carta, legislative assemblies grew in strength. Eventually they would become driving forces in the reduction of the power of the monarchy.  
  
*For additional information about the influence of Magna Carta on American government read:* [*Magna Carta and Its American Legacy*](http://www.archives.gov/exhibits/featured_documents/magna_carta/legacy.html)

But again, this process would take centuries. Early Parliaments were weak. Monarchs were also building effective administrative structures that would allow them to rule, in essence, absolutely.

Monarchs still had the power to call parliaments into session and to disband them when they chose. This gave them power over legislature.

But Parliaments had power over the purse, so monarchs had to call them into session from time to time in order to gain revenue. Slowly Parliament expanded its power.  
  
It got into the habit of presenting grievances to the monarch which had to be redressed prior to the consideration of revenue requests.

But struggles between the Monarchy and Parliament grew over time. These struggles would peak during the reign of the [Stuart Monarchs](http://en.wikipedia.org/wiki/House_of_Stuart) who claimed to rule under divine authority and recognized few (if any) legitimate limitations on their authority.

Timeline of the Stuart Monarchy:   
1603 - 1689  
  
[James 1st](http://en.wikipedia.org/wiki/James_I_of_England)  
[Charles 1st](http://en.wikipedia.org/wiki/Charles_I_of_England)   
[The Commonwealth](http://en.wikipedia.org/wiki/Commonwealth_of_England) –   
[Oliver Cromwell](http://en.wikipedia.org/wiki/Oliver_Cromwell)[Charles 2nd](http://en.wikipedia.org/wiki/Charles_II_of_England)  
[James 2nd](http://en.wikipedia.org/wiki/James_II_of_England)

In the timeline you’ll notice that the rule of the Stuarts was punctuated by a brief period – the commonwealth – where Britain was ruled without a king. This followed the execution, by order of parliament – of Charles I. Afterwards it was briefly a republic, though some argue it was in fact a military dictatorship under Oliver Cromwell.

The Stuarts believed they, not Parliament, were sovereign. Monarchs held that they were the source of law, not Parliament.  
  
Read James I’s opinion on the matter here: [*True Law* of *Free Monarchies*, 1598](http://www.fordham.edu/halsall/mod/james1-trew2.asp)

THE KINGS THEREAFTER in Scotland were before any estates or ranks of men within the same, before any Parliaments were holden or laws made; and by them was the land distributed (which at the first was wholly theirs), states erected and decerned *,* and forms of government devised and established. And it follows of necessity that the Kings were the authors and makers of the laws and not the laws of the Kings

There are many factors driving the conflict between Parliament and the Stuarts, but the conflict drove supporters of Parliament to dust off the Magna Carta and seek to have its principles revived.

The [Petition of Right](http://en.wikipedia.org/wiki/Petition_of_Right) was written and passed by the British Parliament in 1628, to remind the monarch what limits on its power had been agreed to centuries before. Charles 1st had no intention of recognizing limits on his power.

The document was written by a key historical figure: [Edward Coke](http://en.wikipedia.org/wiki/Edward_Coke).   
  
Coke was a major legal figure of the time. He helped establish the British constitutional structure. This included language curtailing the power of the monarch that would later appear in the U.S. Constitution.

Note the 400 year gap between Magna Carta (1215) and the Petition of Right (1628).  
  
In the years between these two documents, the Parliament became strong enough to actually – physically - impose limits on the monarch.

In response to the submission of the Petition of Right, Charles the First suspended Parliament for 11 years. The was the [Eleven Year’s Tyranny](http://en.wikipedia.org/wiki/Eleven_Years_Tyranny).  
  
By suspending Parliament, the monarch removed the key limiting factor on his power.

This led to the accusation that Charles was a tyrant and therefore unfit to rule over Britain.

Charles would eventually be executed by order of Parliament at least in part due to his refusal to acknowledge the authority of Parliament.   
  
The [Execution](http://en.wikipedia.org/wiki/High_Court_of_Justice_for_the_trial_of_Charles_I) of [Charles 1st](http://en.wikipedia.org/wiki/Charles_I_of_England) (1649)

This is a turning point.  
  
The legislature has demonstrated that it has the strength to curtail the power of the king.

This is a huge point.   
  
Power is only limited – truly - by power.

For illustration, here are some You Tube clips from the movie [Cromwell](http://en.wikipedia.org/wiki/Cromwell_(film)):   
  
[The Trial of Charles the First](http://www.youtube.com/watch?v=ps8i34jLFXc)  
[The Execution of Charles the First](http://www.youtube.com/watch?v=6KvQooa-orU)

Parliament created its own army  
  
[The New Model Army](http://en.wikipedia.org/wiki/New_Model_Army)   
  
This was the name of the legislative branches’ very own army. Not hereditary, professional.

Everybody had an army.

For a look at the decisive battle, [click here](https://www.youtube.com/watch?v=6WlO6a_ZBTU).

After the execution came the [Interregnum](http://en.wikipedia.org/wiki/Interregnum_(England)) (1649-1660). This was a period where there was no monarch, and rule ultimately fell under the hands of Oliver Cromwell. But Cromwell proved to be as abusive ruler as any of the Stuarts.

The point was taken that legislative power needed to be checked as much as executive power.   
  
There was a need for balance between separated powers.

The Stuart monarchs were briefly [restored](http://en.wikipedia.org/wiki/English_Restoration) in 1660 when Charles II was invited to hold the crown. The day is now recognized a [Oak Apple Day](http://en.wikipedia.org/wiki/Oak_Apple_Day). The [men responsible](http://en.wikipedia.org/wiki/List_of_regicides_of_Charles_I) for the execution of Charles were arrested and many were executed.

All this did was rekindle the conflict between the Stuarts and Parliament. Charles II would be replaced with James II, who would be finally driven from the throne in the [Glorious Revolution](http://en.wikipedia.org/wiki/Glorious_Revolution).

This is the most crucial transition. After James II vacated the throne it was offered to [William and Mary](http://www.englishmonarchs.co.uk/stuart_6.htm) on the condition that they sign the [English Bill of Rights](http://en.wikipedia.org/wiki/English_Bill_of_Rights) (1689). The document forced the new monarchs to agree to limits on their power as a condition for being given the crown.

William and Mary

This marks Britain’s transition from an absolute monarchy to a constitutional monarchy. After the English Bill of Rights was signed, no monarch would claim divine right to rule again.

The English Bill of Rights was a type of constitution. It defined the relationship between the legislature, judiciary and the executive, and spelled out certain rights of the people.

Many features of the English Bill of Rights would be included in the U.S. Constitution.  
  
Some examples:

The English Bill of Rights

*That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;*

*That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;*

*That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;*

*That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;*

The English Bill of Rights

*That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;*

*That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;*

*That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;*

It creates the institutional arrangement that we would come to know as the separated powers.  
  
But as opposed to the result of the Magna Carta, this arrangement stuck. Parliament had the power to keep the monarchy in its proper place.

This restriction on arbitrary monarchic power would quickly impact the greater society. The reduction of the arbitrary power of the monarchy allowed of the development of personal liberty in Britain.   
  
This included free speech, free press, assembly rights, and the right to petition.

Individuals were then free to challenge orthodox positions regarding the appropriate basis of governmental power.   
  
*It is also important to note that during this time – the colonies were developing in North America, and they were able to rule themselves while Britain was occupied by internal matters.*

It also allowed for John Locke, a British physician and philosopher, to safely argue against the doctrine of divine right of the king and in favor of the theory of natural rights – which Thomas Jefferson would cal unalienable rights.

They could begin to argue that people had natural rights and that governments ought to be based on the consent of the governed.

The events in Britain – the complaints the Parliament was making against the monarch - would foreshadow those the colonists would make against the King beginning in the 1760s.

The idea that people possess natural rights is a philosophical one.

Now we will look more closely at the philosophical transition from divine right to natural right.

Natural Rights and Divine Right are two competing justifications for rule. Divine Right grants to the monarch the authority to rule absolutely, while the doctrine of natural rights places authority in the individual.

[Some Ancient History](http://monty.python.videowall.sytes.org/?p=ckFhV3ZWRkVSVkEvTW9udHkgUHl0aG9uLSBUaGUgQW5ub3lpbmcgUGVhc2FudAk6_oE)  
  
Many ancient rulers – and some contemporary rulers - claimed to be divine.

The Stuart Monarchs never claimed that they were divine, only that their authority was based on a strong concept of divine right.

James I considered himself to be a decent theologian and outlined his views in various writings which were mentioned above:  
[The Works of James I](http://www.luminarium.org/sevenlit/james/jamesbib.htm)  
[The True Law of Free Monarchies](http://dbwf.net/government/stuart.html)

Principles of the Divine   
Right of the Monarch

Men are born into a social order.

As God is Father over the world, the King is Father over the Kingdom

The Fifth Commandment gives the Father control over his family, which extends to the King’s control over the kingdom.

The King is a descendant of Adam who was given dominion over all the world, this dominion is also granted to Kings.

Additional support for the theory was provided by [Robert Filmer](http://en.wikipedia.org/wiki/Robert_Filmer), who wrote [Patriarcha](http://www.constitution.org/eng/patriarcha.htm), which further supported the concept of divine right.

[John Locke](http://en.wikipedia.org/wiki/John_Locke) argued against divine right (very, very carefully) in the [First Treatise on Government](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php?title=222&chapter=16058&layout=html&Itemid=27).  
  
(these kinds of arguments can get you killed)

Locke’s Criticism of   
Divine Right of the King

Patriarchy misinterprets scripture.

Parents do not have absolute control over children, they only have authority over children until they become rational.

Adam (man in general) did not have dominion over other humans, only over other, non-rational, creatures.

Important concept: Rationality

Question:   
  
Where do rights come from? Are they granted by the king? Or are they innate within the individual?

Under the theory of Divine Right, the rights of the individual are granted by the monarch who has this authority because it was delegated to him from God.

Under Natural Rights, these rights are endowed in the individual innately and are then secured by a government they consent to.

The First Treatise on Government is followed by the Second Treatise which offers a replacement for divine right.

The [Second Treatise on Government](http://www.constitution.org/jl/2ndtreat.htm), was written by John Locke to provide a theoretical foundation for the new justification for governmental power.  
  
- see [Sparks Notes](http://www.sparknotes.com/philosophy/locke/) for a shortcut look at it.

Principles of Natural Rights

People are born free and equal in the state of nature.

People are rational.

They possess rights which begin with possession of their lives.

By freely mixing labor with raw materials, they create property.

They have a right to this property.

Principles of Natural Rights, cont.

Rights are insecure in the state of nature.

It is rational to consent to form an association, a government, for mutual security.

Some property, in the form of taxes, and some lives, in the defense of the group, can be sacrificed in order to secure greater rights.

If the government no longer secures these rights, it can be replaced.

By the way, what is [the State of Nature](http://en.wikipedia.org/wiki/State_of_nature)?  
  
 “the hypothetical condition of humanity before the [state](http://en.wikipedia.org/wiki/Sovereign_state)'s foundation.”

It is a state of “perfect freedom of acting and disposing of their own possessions and persons as they think fit within the bounds of the law of nature.” But it is also a state that “'however free, is full of continual dangers.”

It is an example of   
[Social Contract Theory](http://www.iep.utm.edu/soc-cont/)  
  
This sees government as a contract. People agree to form a government in order to secure rights otherwise insecure in the state of nature.

It is used to justify the establishment of government.  
  
It is rational for people to develop a mechanism for securing their rights – their life liberty and property.

Notice that Locke invokes reason. Forming an institution that allows people to work together for a mutual goal is a reasonable thing to do. We will note as we go forward that “reasonableness” is a recurring standard in assessing what is and is not appropriate.

Example: The Fourth Amendment protects people from “unreasonable” searches and seizures.

This becomes a defining standard for Western Governments, and a reason why the wealth began to prosper at this time.   
  
An Islamic schools said that the west is founded upon “laws and rules based on reason” – [Ibrahim Muteferrika](http://en.wikipedia.org/wiki/Ibrahim_Muteferrika)

Big Question:   
  
What is the state of nature like?

Previously, [Thomas Hobbes](http://en.wikipedia.org/wiki/Thomas_Hobbes) (1588 – 1679) had speculated that the state of nature was a state of perpetual war of all against all.  
  
Life without government was “solitary, poor, nasty, brutish, and short.”

Hobbes lived during the British Civil Wars of the 17th Century.   
  
People had to leave the state of nature in order to escape the perpetual violence of the state of nature. Government involved a permanent loss of individual autonomy.

His principle work:  [The Leviathan](http://en.wikipedia.org/wiki/Leviathan_(book)). ([text](http://oregonstate.edu/instruct/phl302/texts/hobbes/leviathan-contents.html))  
  
An early example of social contract theory. Only a strong central government control the violence inevitable in the state of nature.

This is the illustration from the book.

John Locke had a more positive view of the state of nature. He did not consider it to be constantly violent, but he thought people would be subject to the theft of property and other factors that would make the securing of natural rights difficult.

In the state of nature, people have possession of their lives, are free to engage in labor, which creates property, which they are entitled to. But possession of property is not secure. Forming into groups allows for mutual security.

As applied to government, natural law suggests that individuals posses certain natural (unalienable) rights that can only be surrendered for the purpose of security or to pursue the common good.

One must give up a little freedom (in the form of taxes and willingness to fight) in order to secure greater freedoms.

He also argued that a neutral governing institution is necessary in order to establish a system of justice.

It is also argued that a governing entity is required in order to provide “public goods,” which are goods that no private producer has an incentive to provide.

To assert natural rights is to deny the divine right of the monarch, which is treason.   
  
That is why it is important to note that these are written after the Glorious Revolution and the signing of the English Bill of Rights.

The work, along with the Second Treatise, was written in the 1680s during the reign of James II and published anonymously in 1689 after he left the crown.

The concept of natural law had early supporters.   
  
[The Stoics](http://en.wikipedia.org/wiki/Stoicism)  
[Thomas Aquinas](http://en.wikipedia.org/wiki/Thomas_Aquinas)

Basic Premise of Natural Law  
  
The universe is governed by reasonable, rational laws, humans have the capacity to reason, meaning they can understand these laws.

John Locke adds to this theory by applying man’s capacity to reason to the question of how governments evolved.   
  
Because doing so, in the state of nature, was reasonable.

But it adds a philosophical problem:   
  
If we all have natural (unalienable) rights, what gives anyone authority over the others?

The answer: consent.  
  
The concept of the consent of the governed is tied into the concept of the natural rights of the individual. The former is required by the latter.

“What we seek is the reign of law, based upon the consent of the governed and sustained by the organized opinion of mankind.” – [Woodrow Wilson](http://query.nytimes.com/gst/abstract.html?res=F60F10F83C5A11738DDDAC0894DF405B888DF1D3).

Locke’s argument is the heart of the [Declaration of Independence](http://en.wikipedia.org/wiki/The_Declaration_of_Independence).   
  
Let’s look through it now.

The document was produced by the authorization of the Second Continental Congress.  
  
You can find some comments   
on the process [here](http://lawprofessors.typepad.com/law_librarian_blog/2011/07/drafting-process-declaration-of-independence.html).

This makes the American governmental system unique. It is explicitly based on the idea that people have unalienable rights and that the purpose of government is to secure these rights.  
  
([The Rights of Englishmen](http://en.wikipedia.org/wiki/Rights_of_Englishmen))

Some seemed to have doubts about its merit.  
  
Or maybe they were jealous of Jefferson.

[“The Declaration of Independence](http://en.wikiquote.org/wiki/United_States_Declaration_of_Independence) I always considered as a Theatrical Show. Jefferson ran away with all the stage effect of that; *i.e.* all the Glory of it.” – [John Adams](http://en.wikiquote.org/wiki/John_Adams).  
   
Letter to [Benjamin Rush](file:///\\en.wikipedia.org\wiki\Benjamin_Rush) (21 June 1811); published in [*Old Family Letters: Copied from the Originals for Alexander Biddle* (1892), p. 287](http://books.google.com/books?id=5d8hAAAAMAAJ&dq=%22Jefferson+ran+away+with+all+the+stage+effect+of+that%22); also quoted in [*TIME* magazine (25 October 1943)](http://www.time.com/time/magazine/article/0,9171,796192-2,00.html)

[Here is a link to the text](http://avalon.law.yale.edu/18th_century/declare.asp)

As we already know: The argument in the Declaration of Independence has three parts.

The second part makes the case that the King of England was attempting to establish a tyranny by consolidating control over colonial legislative, executive and judicial powers.

Note that the colonists complaints against King George III were very similar the complaints the British Parliament had against Charles I.  
  
This suggests that the complaints were not frivolous, and that they were of the type that would resonate with the British public.

Here are examples of these grievances

Legislative Usurpation: *He has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People.*Executive Usurpation: *He has erected a Multitude of new Offices, and sent hither Swarms of Officers to harass our People, and eat out their Substance.*Judicial Usurpation: *He has made Judges dependent on his Will alone, for the Tenure of their Offices, and Amount and Payment of their Salaries.*

Notice that each grievances accuses the monarch of usurping a particular governmental power. Once he is able control all three – he has successfully established a tyranny.  
*For further detailed information,* [*here is a list of the grievances and the events which led to them*](http://colonialhall.com/histdocs/declaration/)

The third part concludes that the king has demonstrated that he in unfit to be the ruler of a free people and the colonies are now free and independent states.

But the terminology is ambiguous. We are not clear whether the term “The United States of America” is a single proper noun or a description of a relationship among sovereign nations.

It is argued that this was due to the suspicion many had about the abuses that might occur whenever government power was nationalized. This would be a conflict that would heat up over the next decade – and continues in many ways to this day.

Next week we begin discussing constitutions. Their significance and the nature of American Constitutions.

What is a Constitution?  
  
A set of rules for a government that articulate its powers and functions, and establishes its institutions, principles, structures and procedures. It also establishes its relationship with the general population by clearly stating its limits and the rights of the people.

We will look over these three: [The Articles of Confederation](http://en.wikipedia.org/wiki/Articles_of_Confederation)  
[The United States Constitution](http://en.wikipedia.org/wiki/United_States_Constitution)